

MRI: Understanding its limitations

To avoid the pitfalls of MRI in musculoskeletal-related injuries, it's important to understand the indications and limitations of advanced imaging techniques in the individual patient.

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In his article on the facing page, Mr Cherniak argues that compelling reasons exist why MRI should be considered for practically every personal injury claimant. He argues that MRI will, in every instance, benefit the claimant, lawyer, and doctor.

Prior to accepting Mr Cherniak's position, there are important points to consider.

The use of magnetic resonance imaging (MRI) in musculoskeletal medicine has allowed the noninvasive evaluation of soft tissue structures (muscles, tendons, and ligaments), bony elements, and the neuroaxial canal.

In the medical context, the use of MRI is generally reserved for those instances when the results will influence the decision algorithm in patient management. In personal injury cases, MRI can provide clarity to the medical issues.

In his article, Mr Cherniak indicates the primary purpose of the litigation-driven MRI scan can always be said to assist the lawyer in preparation and presentation of the claimant's case. It is often difficult, however, to separate the medical implications of ordering an MRI from the legal implica-

tions. The physician, in every case, will be responsible to explain the medical relevance of the findings to the patient.

The use of advanced imaging should not be guided by the occurrence of an injury but rather by specific clinical signs and symptoms resulting from an injury. In litigation-driven MRIs this approach is potentially violated and significant pitfalls may arise. These potential pitfalls are recognized by physicians, and their reluctance to overinvestigate patients is frequently justified.

Pitfalls of an MRI showing abnormalities

MRIs define anatomical structures. In certain instances MRIs may be able to provide clues of a specific pain generator, but are unable to independently distinguish painful abnormalities from painless abnormalities. MRIs are unable to show us whether abnormal appearing tissues are functioning normally.

Abnormal shoulder and lumbar spine MRI findings in asymptomatic people are common, with the prevalence of abnormal MRI findings in asymptomatic people ranging up to 30% to 60%.^{1,2} Asymptomatic MRI abnormalities can include complete

rotator cuff tears, facet arthropathy, degenerative disc disease, spinal nerve impingement, and disc protrusions.

Following a musculoskeletal injury, most serious medical or surgical pathology can be clinically ruled out through physical examination, history-taking, and basic imaging modalities. In most cases a treatment plan and the phases of recovery may be embarked upon as the next step.

Overinvestigation with advanced imaging without specific clinical signs and symptoms may result in imaging findings that cloud rather than clarify the patient's problems.

Regardless of medical necessity, patients suffering pain and disability with abnormal MRI findings frequently require referral to specialists to interpret the relevance of the imaging findings. Waiting times for specialist appointments can add to patient anxiety and potentially delay participation in treatment programs, return to work, and recovery.

The fact that false positives are common may be used against some patients. Some insurance companies

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cialist, they are never candidates for a publicly funded scan.

However, these claimants are not disenfranchised. The Canada Health Act² permits individuals to go outside of the public system for a diagnostic test like MRI if the procedure is not medically necessary. While this exception is at times exploited by some simply not willing (or able) to wait for their medically necessary scan, it clearly applies for all claimants with a personal injury action. This is because, while there may be important medical benefits that might flow from the MRI's findings, the primary purpose of the scan can always be said to be to assist the lawyer (or any other professional for that matter) in the preparation and presentation of the claimant's case.

It is for this very reason of legal necessity that the cost of the MRI is recoverable from the insurer by the claimant as a disbursement. Simply put, assuming liability, the tort insurer is obligated to pay for the MRI on the same basis it must fund every other disbursement (like any expert report), that it is reasonable and necessary for the proper conduct of the proceeding.^{3,4}

Therefore, due to the ready availability of quality MRI machines in private clinics, personal injury claimants are in a unique (and privileged compared to the general population) position in British Columbia. They are eligible for immediate access to a legal, funded (by the tort insurer), MRI in the private system.

Why do lawyers and patients need this information?

It matters not whether the MRI discloses injury. Either result provides essential information for both the claimant and his or her lawyer (and, in certain instances, the physician).

Benefits of a result showing injury

Quantum

If there is no objective evidence of

injury (e.g., the typical whiplash or soft tissue case), ICBC has a soft cap for non-pecuniary (pain and suffering) damages. Therefore, if a claimant cannot demonstrate the injury in some objective way (by showing a disc injury, a meniscus or rotator cuff tear, etc.) he or she will be limited in the settlement negotiations with ICBC in the amount recoverable for non-pecuniary damages. Since the insurer is already compensating the claimant as if the MRI shows no injury, an MRI finding can only increase quantum, but never decrease it.

Further tests or studies/pecuniary loss issues

The MRI may disclose a condition that may require surgery (e.g., full thickness rotator cuff tears, meniscus tears, nerve root impingements, etc.), which could greatly affect future care or work loss issues. Further, the nature of the injury may require specialized physiotherapy or referral on to other specialists for assessment, which also may affect quantum.

Demonstrative exhibit at mediation or trial

MRI is a computer-generated image and therefore can be very useful as a demonstrative exhibit at trial. An MR image can be enlarged to any size, colored in any manner, and be presented three dimensionally. With enhanced MR images, injuries can actually be seen, which is a very effective tool at mediation and trials.

Benefits of a result showing no injury

Peace of mind, sound professional advice

A result that shows no injury is a good result for the claimant. In practically all cases (with the notable exception of brain injuries), it means there will likely be no long-term effect of the injury for the claimant. The claimant expects his or her symptoms will eventually subside and that he or she

will recover. Not only is this good for peace of mind, it is also very helpful with claimants' financial expectations for the claim.

It is also very important information for the lawyer. Once the claimant's symptoms do subside, the lawyer will be in a position to assess quantum (without waiting the typical two or more years to see if something develops) and have the confidence to advise the claimant to sign a release (which forever compromises the claimant's right to compensation for the injury). For this reason alone, the MRI disbursement can always be said to be reasonable, necessary, and proper.

Baseline

While most claimants only get in one accident in their lifetime, there are some who are not as fortunate and are in two or more. It is not uncommon in such circumstances for the insurer to take the position that the injuries suffered in accident number two were in fact caused in accident number one, for which they have a release. However, if a claimant obtained an MRI for accident one he or she will have a snapshot of the area with which to compare the MRI results from accident two. This baseline MRI information will curtail this type of defence and allow each accident to be properly considered on its own merits.

Professional liability

Though not nearly the issue in British Columbia as it is in the United States, as access increases (there is presently no wait for litigation-driven private MRI in British Columbia), both doctors and lawyers face the risk of negligence claims in situations where an injury that would have been detected by MRI but was not (as the MRI was not done) then manifests into a serious injury after the claim is settled and released. In such circumstances, the claimant is left only to sue the professionals. While this risk is currently relatively small, it can easily be

eliminated by ensuring a scan is conducted prior to the final disposition of the claim.

Conclusion

Since there is immediate, fully funded access to MRI for personal injury claimants, litigation-driven MRI scans should be considered differently from publicly funded scans by lawyers and doctors in British Columbia. The MRI will, in every instance, benefit the claimant, his or her lawyer, and in many instances, his or her doctor.

Failure to send the claimant for an MRI risks the possibility of a misdiagnosis, potential delays in the resolution of the claim and future liability claims against the professionals.

The key to litigation-driven MRI is not that it is medically necessary, but rather that it is reasonable and necessary for the proper conduct of the proceeding. It is for this very reason the cost of the MRI is recoverable, and that when a lawyer requests that a doctor requisition an MRI for his or her claimant, the lawyer is practising law, not medicine.

Competing interests

Mr Cherniak is the president and general counsel of Canadian Magnetic Imaging based in Vancouver, British Columbia.

References

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4. Zahynacz v. Kozak, (May 4, 1999), B.C.S.C., New Westminster Registry, Docket No. SO1201 and, Hazbawi v. Lucier [2001] B.C.J. No. 2842 B.C.S.C. New Westminster Registry No. SO51663.

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or lawyers may interpret this fact incorrectly in personal injury cases, and discount abnormal MRI findings when the abnormality may in fact indicate a cause for the pain.

Although MRIs may be considered as objective evidence in court, abnormal MRI findings in one patient may be causally related to permanent neurological impairment and pain. In another patient, the same MRI findings may be asymptomatic.

Pitfalls of a normal MRI

The presence of a normal MRI does not imply that a structure is not painful. Musculoskeletal and neurologic structures may cause pain and functional impairment in the absence of MRI abnormalities. Although an MRI showing no abnormality is usually a favorable result for the claimant or patient, there is little basis to advise a patient that his or her symptoms will eventually subside because the MRI is normal.

Conclusions

In order to avoid the pitfalls potentially associated with the use of MRI in musculoskeletal-related injuries, it is important to have an understanding of the indications and limitations of advanced imaging techniques in the individual patient or claimant.

Competing interests

None declared.

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